AGENDA

SPECIAL COMMITTEE ON ALCOHOL, OTHER DRUGS, AND YOUTH SERVICES

January 04, 2021
Aldermen Barry, Cavanaugh, Long, Roy, O'Neil

Immediately Following CIP
Online Virtual Meeting
Call +1 (408) 650-3123 and enter Access Code: 750-451-157 when prompted

1. Chairman Barry calls the meeting to order.

2. Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Committee is authorized to meet electronically.

3. The Clerk calls the roll.

4. Report from the Committee on Administration/Information Systems recommending that ordinance amendments:

   "Amending Chapter 130: General Offenses of the Code of Ordinances of the City of Manchester by adding a new section prohibiting camping in public places."

   "Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

   be referred back to the Special Committee on Alcohol, Other Drugs and Youth Services.
   (Note: This committee report was accepted at the 10/29/2019 BMA meeting.)

5. If there is no further business, a motion is in order to adjourn.

To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Administration/Information Systems respectfully recommends, after due and careful consideration, that the ordinance amendments:

"Amending Chapter 130: General Offenses of the Code of Ordinances of the City of Manchester by adding a new section prohibiting camping in public places."

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

be referred back to the Committee on Alcohol, Other Drugs and Youth Services.

(Unanimous vote)

Respectfully submitted,

Clerk of Committee

At a meeting of the Board of Mayor and Aldermen held October 29, 2019, on a motion of Alderman O'Neil, duly seconded by Alderman Cavanaugh, the report of the Committee was accepted and its recommendation adopted.

City Clerk

MEMORANDUM

TO: Special Committee on Alcohol, Other Drugs, and Youth Services
FROM: Emily Gray Rice, City Solicitor
RE: Ordinances and Next Steps
DATE: October 1, 2019

At its September 3, 2019 meeting, the BMA directed this office to draft ordinances prohibiting camping in public places, and addressing trespassing on public property in certain instances. This directive followed presentations and advice provided to the BMA by this office throughout 2018 and 2019.

The Committee has received draft ordinances for its consideration, as follows:

- Amending Section 96.03 to include cemetery within the definition of a park;
- Amending Section 96.06 to include hanging certain items;
- Amending Section 96.08 to provide for the issuance of trespass notices for offenses committed in parks and cemeteries;
- Adding Section 96.09 to establish an Appeals Division within the Department of Public Works; and,
- Amending Chapter 130 by adding Section 130.13, prohibiting camping in public places.

These drafts follow the action taken by the BMA at its September 3, 2019 meeting to strike the word, "overnight," from Section 96.06 (E), "Camp."

These drafts have not been reviewed by the Department of Public Works, the Manchester Police Department or other potentially-affected departments.

In addition, please be advised that the constitutionality of measures similar to the draft amendments to 96.08, 96.09 and Chapter 130 are under court review in other jurisdictions.

The BMA may suspend the rules to adopt the amendments to Section 96.03 and 96.06 at tonight's meeting.

In terms of next steps, prior to the adoption of the 96.08 and 96.09 amendments, a determination will need to be made as to which department will shoulder administrative responsibility for trespass a citations, actions and appeals, and the details as to who those functions will be administered. The responsibilities, compensation (if any), and nature of employment of hearing officers will also need to be decided, along with any appropriation requirements for the support of the Appeals Division. Similarly, prior to the adoption of 130.13, a determination will need to be made as to how the interface between the City and shelter providers will be managed; how real-time space availability data will be obtained; and what appropriation requirements are associated with this effort.

Thank you.

Kevin A. Sheppard, P.E.
Public Works Director

Timothy J. Clougherty
Deputy Public Works Director

Commission
Toni Pappas
Patrick Robinson
James Burkush
Trixie Vazquez
Armand Forest

CITY OF MANCHESTER
Department of Public Works

October 7, 2019

Committee on Administration/Information Systems
c/o Mr.Matt Normand, City Clerk
One City Hall Plaza
Manchester, NH 03101

Honorable Committee Members:

The Department of Public Works applauds the Special Committee on Alcohol, Other Drugs and Youth Services for taking the necessary steps in order to curtail some of the negative behavior being displayed in our Parks. We agree with the majority of the steps being proposed as well as the processes structured to support enforcement of these ordinances and ordinance revisions.

However, we feel further discussion is necessary relative to the following:

Issuance of notices or warnings for City of Manchester Code of Ordinance, or State statute violations by 'park attendants'

Although "park attendant' is not specifically defined within the ordinance changes we have assumed this to refer to employees of the Parks, Recreation and Cemeteries Division of Public Works, who oversee the facilities and grounds during events.

These individuals are not trained to perform the functions defined within the ordinance. In addition the skillset required and responsibilities fall outside the job classification. We recommend these responsibilities be limited to those with proper training and experience.

Adjudication of trespass notices and establishment of an Appeals Division within Public Works

The responsibilities associated with proper management and oversight of these matters falls outside the traditional mission and skillset of the Public Works Department staff. In our opinion, the City would be better served by appointing an agency with more experience in matters of law to oversee these proceedings.

Thank you for your consideration. Mr. Clougherty, or myself, will be available for questions regarding this matter.

Sincerely,

Kevin A. Sheppard
Director of Public Works

Cc: Emily Rice/City Solicitor
Carlo Capano/Chief of Police
Timothy Clougherty/Deputy DPW Director
Mark Gomez/Chief of Parks and Recreation

City of Manchester
New Hampshire

In the year Two Thousand and **Nineteen**

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

I. Amend the Code of Ordinances by inserting the following new language.

§96.08 ENFORCEMENT.

(D) *Issuance of a Formal Trespass Notice.* The Public Works Director or designee, park attendants, and the Manchester Police Department (hereinafter also referred to as, "the enforcing agent") may, in their discretion, issue a formal trespass notice or warning to any individual whom they have probable cause to believe has, in their presence, committed any violation of the City of Manchester Code of Ordinances, or of any state statute, or committed a contempt offense, provided that the alleged conduct occurred while in any city park and subject to the following provisions:

(1) *Warning to be issued.* Prior to issuance of any formal trespass notice under this provision, the individual shall be issued a verbal warning and given a reasonable opportunity to cure the offending conduct by taking corrective action before a formal notice of trespass from the park is issued.

(2) *Must be supported by probable cause.* A formal trespass notice shall only be issued in those instances in which the enforcing agent has probable cause to believe that the person to be trespassed has committed a violation of the City of Manchester Code of Ordinances, or of any state statute, or committed a contempt offense and the alleged misconduct has occurred in the presence of the enforcing agent issuing the notice.

(3) *Written order required.* Any and all formal trespass notices shall be in writing on the form adopted by the Public Works Director or designee and shall have the following information, in detail:

(a) The name of the trespassed individual;
(b) The address of the trespassed individual;
(c) The date of birth of the trespassed individual;
(d) The date and time that the trespass order shall go in effect. All dates and times listed shall afford the person being trespassed a reasonable opportunity to collect their possessions and exit the named park in an orderly and safe fashion. However, in the event that the person trespassed is arrested, the date and time of the arrest shall be listed;
(e) The duration of the trespass, as governed by this section;
(f) The name of the specific park from which the person is trespassed per this specific, written order. However, at no time shall any single trespass order be issued which cites all City of Manchester parks, or any words or combination of words that could be interpreted as trespassing the person from all City of Manchester parks. Notwithstanding the foregoing, nothing shall prevent a person from being issued multiple trespass orders under this provision;

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(g) The name of any witness or witnesses to the issuance of the trespass order, and their contact information;
(h) The printed name of the issuing enforcing agent and the name of their department;
(i) The signature and date of signature of the enforcing agent;
(j) A statement that the person has a right to appeal the trespass order by filing a written request to appeal with the Department of Public Works located at 475 Valley Street, Manchester, NH 03103 within ten (10) calendar days of the date that the trespass order was issued; that any appeal hearing will be held at the Department of Public Works before a neutral hearings officer; and that in the event of the filing of an appeal, the trespass order shall be stayed pending the ruling of the hearing officer; and,
(k) A statement that the alleged offender is barred from going to, entering, or remaining at the specified park for the period set out in the formal trespass notice, absent a formal waiver granted by the Director of Public Works or his or her designee or the pendency of an appeal.

(4) *Waiver.* A person issued a formal trespass notice under this provision may apply in writing on the form provided by the City to the Director of Public Works for a waiver of the formal trespass notice on the grounds that access to the park specified in the formal trespass notice is necessary:
(a) As a condition of or to allow performance of the person's employment;
(b) To travel to and from, and to access their lawful residence or place of employment;
(c) As a requirement or part of any licensed and recognized educational program;
(d) To engage in the exercise of a constitutionally-protected activity; and/or,
(e) For other good cause alleged.

The Director of Public Works or designee shall have sole and exclusive authority to grant a waiver, and it shall be the burden of the applicant to demonstrate that the waiver is necessary for the reasons alleged. The Director of Public Works shall issue a written decision upon any application for a waiver within five (5) business days and mail the decision to the address provided by the applicant for waiver.

The appeal of a formal trespass notice shall not bar a person from applying for a waiver. Applying for a waiver is not a prerequisite to appealing a formal trespass notice.

(5) *Original.* A complete original formal trespass notice shall be served in-hand to the named recipient at the time the named recipient is served with a copy of any citation, summons, or associated complaint.

City of Manchester
New Hampshire

In the year Two Thousand and ***Nineteen***

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(6) *Copies.* A true and accurate copy of any formal trespass notice issued shall be filed with both the Department of Public Works and the Manchester Police Department. A copy of the formal trespass notice shall be provided to the named recipient of the trespass notice upon request and without cost for the first copy. The Director of Public Works or designee may charge the named recipient a reasonable copy fee for any additional copies.

(7) *Length of Trespass.* Whether a named recipient is issued a formal warning or a formal trespass notice shall be determined by the procedure set forth above and by whether the person has a "qualifying prior offense." The duration of any trespass notice shall also be based upon whether the named recipient has a "qualifying prior offense." The term "qualifying prior offense" as used in this section shall mean a conviction dated after the effective date of this ordinance by a court of competent jurisdiction for any violation of the City of Manchester Code of Ordinances, state statute, or contempt offense alleged to have occurred in a City of Manchester park or cemetery, or the entry of a default dated after the effective date of this ordinance by a court of competent jurisdiction under R.S.A. 39:31-d, IV.

The following action shall be taken based upon whether the named recipient has qualifying prior offenses:

(a) *First Offense – Formal Warning.* A person who does not have a qualifying prior offense shall be issued a formal written warning advising the person that any further violations of this provision may subject them to a formal trespass from the City of Manchester park.

(b) *Second Offense – Twenty-Four (24) Hour Trespass Notice.* Any person who, in the two (2) years preceding the date of the violation of the City of Manchester Code of Ordinances, or of a state statute, or a contempt offense which is the subject of the current enforcement action, has a "qualifying prior offense" and has not been previously provided with a formal trespass notice, shall be trespassed from the park specified in the order for a period of twenty-four (24) hours from the effective time and date of the formal trespass order or order upholding the trespass order following appeal, whichever is later.

(c) *Third Offense – Thirty (30) Day Trespass Notice.* A person, who in the five (5) years preceding the date of the violation of the City of Manchester Code of Ordinances, or of a state statute, or a contempt offense which is the subject of the current enforcement action, has no more than two "qualifying prior offenses" shall be trespassed from the park specified in the order for a period not exceeding thirty (30) days from the effective time and date of the formal trespass order or order upholding the trespass notice following appeal, whichever is later.

City of Manchester
New Hampshire

In the year Two Thousand and ***Nineteen***

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(d) *Fourth Offense or Subsequent Offenses.* A person, who in the five (5) years preceding the date of the violation of the City of Manchester, NH Code of Ordinance, state statute, or contempt offense which is the subject of the current enforcement action, has three "qualifying prior offenses" shall be trespassed from the park specified in the order for a period not exceeding ninety (90) days from the effective time and date of the formal trespass order or order upholding the trespass notice following appeal, whichever is later.

(8) *Appeals.* Any person issued a formal trespass notice under this provision shall have the right to appeal the issuance of the order under the procedure set forth above and the filing of an appeal shall stay the provisions of the formal trespass notice pending resolution.

(9) *Penalty.* Any person who violates a formal trespass notice issued pursuant to this section, shall be subject to the immediate expulsion from the identified park under §96.08(B) and to the penalty set forth in §10.99.

§96.09 DIVISION ESTABLISHED.
An Appeals Division is hereby established within the Department of Public Works.

§96.10 DUTIES OF APPEALS DIVISION.
The Appeals Division shall:

(A) Facilitate the appeals process for formal trespass notices issued pursuant to §96.08(D);

(B) Issue, receive, manage, and maintain all records, orders, and filings for all formal trespass notices and formal warnings issued pursuant to §96.08(D);

(C) Contract with independent hearing officers and interpreters and insure the availability of a hearing officer and interpreters for appeals of formal trespass notices issued pursuant to §96.08(D);

(D) Provide space and necessary staff for any hearings conducted with regards to an appeal of a formal trespass notice issued pursuant to §96.08 (D);

(E) Receive and process all waiver requests made pursuant to §96.08(D)(4);

(F) Provide all necessary equipment to audio record and store audio recordings of any hearings conducted pursuant to this appeals process;

City of Manchester
New Hampshire

In the year Two Thousand and

Nineteen

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(G) Adopt and issue all forms, notices, and orders related to this appeals process; and

(H) Perform all such other duties or tasks as may be assigned by the Board of Mayor and Aldermen or as may be incidental to the duties and tasks set forth above.

§96.11 ADMINISTRATION.
The Appeals Division shall be responsible for the daily administration of the appeal process.

§96.12 APPEALS PROCEDURE.

(A) The purpose of the section is to provide the rules, practices, and procedures governing appeal of formal trespass notice issued under §96.08(D). The rules, practices, and procedures set forth herein shall govern all appeals and hearings related to formal trespass notices issued under §96.08(D), unless otherwise provided for by an action of the Board of Mayor and Aldermen. The Director of Public Works or his or her designee shall be authorized to adopt any forms to assist this appeals process.

(B) A Hearing Examiner shall not waive the application of any provision of this section.

(C) *Definitions.* All words are ascribed their plain and ordinary meaning, except for the following terms:

(1) "Appellant" means the person who has filed a request for a hearing with the Appeals Division seeking to overturn the issuance of a formal trespass notice issued under §96.08(D)
(2) "Enforcing agent" shall mean a person authorized under §96.08(D) to issue a formal trespass notice.
(3) "Formal trespass notice" shall mean a notice served upon a person by an enforcing agent under §96.08(D) informing said person that they are trespassed from a specific park pursuant to §96.08(D).
(4) "Hearing Examiner" shall mean the person designated by the Appeals Division to hold the appeal hearing.
(5) "Recipient" shall mean the person who was issued a formal trespass notice pursuant to §96.08(D)
(6) "Working days" shall mean days exclusive of Saturday, Sunday, state, and federal holidays.

City of Manchester
New Hampshire

In the year Two Thousand and ***Nineteen***

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(D) Within ten (10) working days of the date of issuance indicated on the formal trespass notice, the recipient may file a request for a hearing at the Appeals Division of the Department of Public Works at no cost to the recipient. The Director of Public Works or his or her designee shall have the authority to accept filing via facsimile or e-mail, at their discretion, and shall provide public notice of any exercise of this discretion including an email address and facsimile number. Any request for a hearing received by the Appeals Division after this time period shall be returned to the appellant with that notation that the request is "dismissed – untimely."

(E) *Request for a Hearing.* All requests for a hearing shall be typed, legibly written, or printed and shall contain the following information:

(1) The name, date of birth, and address of the recipient;
(2) The name and address of the recipient's attorney, if any;
(3) The name and agency of the enforcing agent;
(4) A concise statement of facts and grounds upon which the recipient is relying upon to support their request that the formal trespass notice be overturned;
(5) A request for relief that the formal trespass notice be overturned;
(6) A citation to any statute, rule, orders or other authority that entitles the recipient to the relief requested;
(7) The signature of the recipient and any counsel for the recipient along with the date signed.

(F) Incomplete or illegible requests for a hearing shall be returned to the appellant at the address provided with a notice of the deficiencies. The Appeals Division shall permit the appellant an additional ten (10) working days to cure any noted deficiencies. If any subsequent request for a hearing filed under this provision remains illegible, or fails to contain the required items set forth above, or if the appellant fails to take any corrective action, the request for a hearing shall be summarily denied and no hearing shall be scheduled. Notice of the summary denial shall be sent to last known address of the appellant informing the appellant of the denial and that the trespass order set forth in the formal trespass notice shall go into effect without further notice forty-eight (48) hours after the date on cover letter. A copy of this Notice shall also be sent to the City Clerk's Office to be posted for a period of two (2) weeks in a location designated by the City Clerk.

(G) If a complete and legible request for a hearing is filed, the Appeals Division shall schedule a hearing in accordance with the provisions of this section and shall send notice to all parties. A copy of the request for hearing filed by the appellant shall be affixed to the notices.

City of Manchester
New Hampshire

In the year Two Thousand and

Nineteen

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(H) All hearings shall be assigned a case number and be scheduled as soon as practicable following acceptance of the request for a hearing by the Appeals Division. The scheduling of the hearing shall provide all parties with a reasonable opportunity to prepare for the hearing including a reasonable amount of time to conduct discovery and subpoena witnesses. No hearing shall be initially scheduled sooner than fourteen (14) working days following the date the Appeals Division accepts the request for a hearing and no hearing shall be initially scheduled later than thirty (30) working days following the date the Appeals Division accepts the request for a hearing.

(I) *Notice of Hearings.* All hearing notices shall be in writing setting forth the date, time, and location of the hearing and sent postage pre-paid to the appellant and the enforcing agent at the address provided in the request for a hearing, unless:

(1) Either party has prearranged with the Appeals Division to receive electronic service and provided an accurate email address;

(2) Either party has filed a written notice with the Appeals Division updating their address; or

(3) An attorney has filed an appearance with the Appeals Division advising that they are representing either the appellant or the enforcing agent at which time all notices, communications, and orders shall be sent only to the attorney or attorneys.

(a) Any attorney who wishes to withdraw from representation shall file a written notice with the Appeals Division informing the Division of the withdrawal at which time all further notices and order shall be sent to the original party at the last address provided.

(J) *Continuances.* Unless otherwise provided herein, all requests for a continuance of a hearing shall be made in writing with a copy to all other parties and filed with the Appeals Division within five (5) working days of the date of the hearing. The written request or motion shall contain but not be limited to the following information:

(1) The specific reason(s) for the request including issue(s) to be resolved and conflicts with scheduled court appearances;

(2) Optional dates when all parties to the matter would be available;

(3) The identity of the requestor; and

(4) The name of the appellant and appellant's date of birth.

(K) Appearance by a representative shall not waive a party's required presence at a hearing.

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(L) Oral motions or late motions to continue shall be permitted in exigent circumstances, which shall include:
(1) Serious illness;
(2) Hospitalization;
(3) Incarceration;
(4) Death of a family member; or
(5) Other unforeseen circumstances beyond the party's control that requires the party's absence from the scheduled hearing.

(M) *Hearing Examiner.* The Hearing Examiner shall be supplied by the Appeals Division at the cost of the Appeals Division and at the time the Hearing Examiner enters into any contract for services with the Appeals Division, they shall not be a present or former employee of the City of Manchester, NH, of a parent, sibling, or spouse of a current employee of the City of Manchester, NH and shall be an attorney in good standing and licensed to practice law in the State of New Hampshire.

(N) *Appeal Assignment.* When an appeal is assigned to a Hearing Examiner, it shall remain with that Hearing Examiner until the appeal is concluded unless transfer is required based upon the following reasons:
(1) The Hearing Examiner has withdrawn based upon a discovered conflict of interest; or
(2) The Hearing Examiner is unable to continue in their capacity due to illness, accident, death, or termination of contract with Appeals Division.

(O) *Withdrawal of Hearing Examiner.* A Hearing Examiner shall, at any stage of the appeals process, withdraw from any matter if the Hearing Examiner has or has had a personal or business relationship with any party, witness, or representative that may hinder the Hearing Examiner from being able to arrive at an impartial decision on the issue(s), or for any other reason that might interfere with the Hearing Examiner's ability to remain impartial.

(P) *Authority of the Hearing Examiner.* Subject to state law and the provisions of the City of Manchester, NH Code of Ordinances, the Hearing Examiner shall have the authority to:
(1) Schedule and hold hearings under this provision;
(2) Administer oaths and affirmations;
(3) Order the sequestration of a witness or witnesses, upon request of a party;
(4) Determine the order of proof in any proceeding;
(5) Receive relevant evidence and rule on offers of proof in appeal hearings;
(6) Take official notice of any facts which are of common knowledge and general notoriety;
(7) Regulate and control the course of any hearing under this provision;

(8) Hold on the record conferences for the settlement or simplification of issues, or for obtaining stipulations as to issues of fact or proof by consent of the parties;
(9) Dispose of procedural requests, including adjournments or continuances, at the request of the parties or on the Hearing Examiner's own motion;
(10)Interview and examine witnesses and documents as the case may require;
(11)Direct parties to appear at hearings;
(12)Consider and evaluate the facts and evidence on the record and make findings of fact, conclusions of law, and dispositions;
(13)Determine credibility or weight of evidence in making findings of fact and conclusions of law;
(14)Render oral and written decisions, reports, or recommendations as authorized by statute, law, or ordinance as may be necessary;
(15)Make a complete record of any proceeding including all relevant matters;
(16) Uphold or overturned a formal notice of trespass; and
(17) Take any action in a proceeding necessary to conduct and complete the appeal not inconsistent with applicable statutes, laws, ordinances, and precedents.

(Q) *Control of the Hearing.* In cases of disorder or refusal to comply with the provision governing the hearing, the Hearing Examiner shall use reasonable means to control the hearing including, but not limited to, sequestration, exclusion, and continuance of the matter. Parties, representatives, observers, and witnesses shall not engage in bitter exchanges, vulgarities, or abuse or make offensive or insulting comments. When such an act is committed, the Hearing Examiner shall admonish the offender reminding the offender that such behavior does not contribute to a fair hearing and impedes the orderly disposition of the matter. If the offense is repeated and further admonition appears fruitless and the Hearing Examiner finds that the hearing cannot proceed due to the continued disorderly conduct, the Hearing Examiner after administering a full and fair warning that the persons conduct will result in exclusion, shall exclude the disorderly person from the hearing. The offensive conduct of a party, witness, member of the public, or representative shall not form the basis for a finding against a party. Rather, their ordered exclusion shall only prevent their further participation in the hearing and the hearing will continue without their presence and the Hearing Examiner shall issue a ruling based upon the evidence presented.

(R) *Record of the Hearing.* All hearings under this provision shall be audio recorded and a copy of the hearing shall be made available upon written request for a reasonable fee as determined by the Director of Public Works. All requests for a copy of the audio record must be made in writing and received by the Appeals Division within sixty (60) days of the date of the hearing. All audio records shall be retained for the period of seventy-five (75) days by the Appeals Division.

City of Manchester
New Hampshire

In the year Two Thousand and ***Nineteen***

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(S) *Public Access.* Except where otherwise provided for by law, all appeals hearing shall be open to the public. Members of the press shall be admitted to the hearings whenever the public is permitted. If the press is present at a hearing, the Hearing Examiner shall brief them, off the record, in the presence of all parties, as to the nature and purpose of the hearing. Any person or party shall be permitted to record the hearing provided they notify the Hearing Examiner prior to the commencement of the hearing that they will be recording. Upon receiving such notification and prior to commencing the hearing, the Hearing Examiner shall notify all present that in addition to the official audio, that specific person or persons are recording the hearing.

(T) *Interpreters.* Upon request, an interpreter shall be provided to the appellant for the appellant's specified language. The interpreter shall not be at the time that their services contracted or volunteered a present or former employee of the City of Manchester, NH, of a parent, sibling, or spouse of a current employee of the City of Manchester, NH. All requests for an interpreter should be filed in writing with the Appeals Division at the time the request for hearing is filed. Request for an interpreter filed or made after the date that the request for hearing was filed may result in the hearing being continued. Prior to commencing any hearing where an interpreter will be participating, the Hearing Examiner shall administer an oath or affirmation to the interpreter(s) to truthfully and accurately translate, to the best of their ability, all questions asked and answers given.

(U) *Oaths or Affirmations.* All testimony offered by live witnesses present at the hearing shall be under oath or affirmation. The Hearing Examiner shall administer the oath or affirmation of each witness.

(V) *Motions.* Any and all requests for relief shall be in writing either typed, legibly written, or printed and shall state with particularity the grounds upon which they are based. A written motion submitted shall become part of the case file. Any party filing a written motion shall certify that a copy was sent to the opposing party or the opposing party's representative. All motions shall be filed five (5) working days prior to the hearing and any objection or responsive pleading may be filed up and until the time of the hearing. Failure to file an objection shall not be grounds to grant a particular motion rather, the Hearing Examiner shall consider the relief requested and the grounds and facts contained in the motion and any and all relevant information in the case file before making a determination. Oral and untimely motions shall only be allowed if the Hearing Examiner finds on the record that circumstances prevent the filing of a timely written motion. If the Hearing Examiner allows a late written motion or oral motion, the Hearing Examiner shall afford the opposing party a reasonable opportunity to respond and shall order the hearing continued to a later date to allow for the response and the continuance shall be attributed to the party that filed or made the motion.

City of Manchester
New Hampshire

In the year Two Thousand and ***Nineteen***

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(W) *Discovery.* A Hearing Examiner shall permit discovery upon a finding by a preponderance of the evidence that such discovery is necessary for a fair hearing. In determining necessity that examiner shall consider:

(1) The complexity of the issues involved;
(2) Other opportunities or information available to discover the information sought; and
(3) Any other special or exceptional circumstances that exist.

(X) *Applicable Rules of Evidence.* The following rules shall govern all hearings under this provision related to an appeal of formal trespass notice issued pursuant to §96.08(D):

(1) Any hearing under this provision shall not be bound by common law or the rules of evidence;
(2) All relevant evidence shall be admissible;
(3) Evidence may include but shall not be limited to:
  (a) Statements made under oath including prior testimony;
  (b) Affidavits;
  (c) Official documents;
  (d) Testimony of witnesses.
  (e) Hearsay shall be admissible, provided the witness offering the hearsay testimony is not a mere reporter of information gathered by others as set forth under State v. Poulicakos, 131 N.H.709 (1989).

(Y) *Exclusion of Evidence.* The Hearing Examiner may exclude any irrelevant, immaterial, or unduly cumulative or repetitious evidence.

(Z) *Privileges and Immunities.* Applicable statutory and constitutional privileges and immunities requiring exclusion of evidence in civil proceedings shall be recognized, provided however, that nothing contained herein shall prohibit a party from waiving his privilege or immunity.

(AA) *Decisions.* Within a reasonable time after the hearing, not to exceed thirty (30) working days after the conclusion of the hearing, the Hearing Examiner shall issue a written decision either upholding or overturning the formal trespass notice issue to the appellant and the reason therefore. All decisions shall be reached on the basis of a preponderance of the evidence. The decision setting forth findings of fact, conclusions of law, and disposition made by the Hearing Examiner shall be provided to all parties. Upon request of the Hearing Examiner, either party may submit proposed findings of fact and conclusions of law. If submitted, the Hearing Examiner's decision shall include rulings on the proposals. All decisions of the Hearing Examiner are final and not subject to reconsideration. A copy of any decision rendered under this provision shall be sent to the City Clerk's Office where it will be posted for public inspection and review for a period of two (2) weeks.

City of Manchester
New Hampshire

In the year Two Thousand and

Nineteen

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

§96.13 APPEAL – BURDEN OF PROOF AND STANDARD OF REVIEW.

(A) *Burden of Proof*: The City shall bear the burden of proof in any appeal hearing and must prove its case by a preponderance of the evidence. "Proof by preponderance of the evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not to be true. No negative inference shall be drawn by the Hearing Examiner based upon the appellant's decision to remain silent or not present evidence.

(B) *Standard of Review.* The Hearing Examiner shall uphold the formal trespass notice if the Hearing Examiner finds that the City has met its burden and shown by preponderance of the evidence that:

(1) the formal trespass notice was issued to appellant;
(2) the appellant received the formal trespass notice in compliance with all of the requirements of §96.08(D);
(3) that the enforcing agent had probable cause to believe that the appellant violated a provision of the City of Manchester, NH Code of Ordinances, state law, or contempt offense while in a city park or cemetery;
(4) that the appellant was given a verbal warning that the person's conduct would result in a formal trespass order;
(5) that the appellant was given an opportunity to correct their behavior and take corrective action; and
(6) that the appellant did not correct their behavior and take corrective action. If the Hearing Examiner finds that the City has failed to establish any of the above-listed factors, then the formal trespass notice shall be overturned.

(C) The Hearing Examiner is only authorized to either uphold the formal trespass notice or overturn the formal trespass notice. The Hearing Examiner shall not in any other manner change any term of the formal trespass notice.

§96.14 FAILURE TO APPEAR.

(A) *Failure to Appear by Appellant.* If the appellant fails to appear for the hearing and no motion to continue has been made or a motion to continue has been denied, the Hearing Examiner shall request an offer of proof by the enforcing agent or the City's representative and shall make a determination based upon the offer of proof whether the City has met its burden of proof. If the City meets its burden of proof by offer of proof then the formal trespass notice shall be upheld. If the City does not meet its burden of proof by offer of proof then the formal trespass notice shall be overturned. The Hearing Examiner shall issue a decision setting forth any findings and rulings under this section and send a copy to all parties.

City of Manchester
New Hampshire

In the year Two Thousand and ***Nineteen***

AN ORDINANCE

"Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

B) *Failure to Appear by Enforcing Agent or City Representative, or essential witness.* If the City is unable to go forward with the hearing due to absence of the enforcing agent, city representative, or an essential witness, and the City has not filed a motion to continue or a motion to continue is denied, the formal trespass notice shall be overturned. The Hearing Examiner shall issue an order overturning the formal trespass notice and state the non-appearance as the reason. A copy of this order shall be sent to all parties.

(C) *Motions to Re-Open.* A party who failed to appear may move to re-open the appeal for a hearing on the merits. A Hearing Examiner shall re-open a case where the Hearing Examiner is convinced that the party had good cause for failing to appear for the hearing. Good cause shall mean:

(1) Serious illness;
(2) Hospitalization;
(3) Incarceration;
(4) Death of a family member; or
(5) Any other unforeseeable circumstance beyond the party's control that requires the party's absence from the scheduled hearing.

§96.15 NOTICE OF DECISION.

(A) If the formal trespass notice is upheld by the Hearing Examiner, then the trespass order contained therein shall go into effect forty-eight (48) hours after the date upon which a copy of the decision was sent to the parties. The date that the decision was mailed out shall be clearly indicated on a cover letter.

(B) If the formal trespass order is overturned by the Hearing Examiner, then the formal trespass notice shall be so marked.

(C) A copy of the formal trespass notice, any decision, and any cover letter shall be sent to all parties and to the Manchester Police Department and City Clerk's Office.

II. This ordinance shall take effect upon passage.

City of Manchester
New Hampshire

In the year Two Thousand and ***Nineteen***

AN ORDINANCE

"Amending Chapter 130: General Offenses of the Code of Ordinances of the City of Manchester by adding a new section prohibiting camping in public places."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

I. Amend the Code of Ordinances by inserting the following new language.

§130.13 CAMPING IN PUBLIC PLACES.

(A) *Prohibitions.* It shall be unlawful for any person to use or cause to be used any of the streets, sidewalks, square or any other public place, excepting parks as governed by Chapter 96, as a camping place absent prior written permission from the Board of Mayor and Aldermen or its designee. As used in this provision, the term "camp" or "camping" shall mean the use of public property as a temporary or permanent place of dwelling, lodging or residence, or as a living accommodation at any time between sunset and sunrise as defined on the date of offense by the official government record, or as a sojourn that has not been authorized by the Board of Mayor and Aldermen or its designee. Indicia of camping may include, but are not limited to, any one or more of the following: storage of personal belongings; using tents, tarps or other temporary structures for sleeping or storage of personal belongings; hanging clothes line; carrying on cooking activities or making any fire in an unauthorized area; or any of such activities in combination with either sleeping or making preparations to sleep (including but not limited to the laying down of cots, cushions, sheets, blankets, sleeping bags or other bedding for the purpose of sleeping).

(B) *Enforcement.* The Manchester Police shall enforce this camping section only when the individual is on public property and there is an "available overnight shelter." The term "available overnight shelter" shall mean that the person can, at the time of citation, go to a local homeless shelter, that said shelter has an available overnight space for the individual at no charge to the person, that said available overnight space will be available to that person upon their arrival and that the person is not barred for any reason including but not limited to bail conditions, protective orders, trespass orders, rules of the shelter, policies of the shelter, intoxication or impairment from going to the local homeless shelter. No person shall be cited unless and until a police officer receives confirmation of "available overnight shelter" as defined above, and the person has been advised that overnight shelter is available, warned that they will be cited should they not go to the "available overnight shelter" and continue to camp, and they have been given a reasonable opportunity to comply with the request. Reasonableness shall be judged based upon the specific facts of each case. If during the course of reasonably attempting to comply with request of the police officer to desist camping in a public place, the shelter bed becomes unavailable for any reason, the person shall not be cited. A police officer shall be required to conduct this inquiry each and every time prior to issuing a citation under this section.

(C) *Exceptions.* This section does not affect any other provision of the City of Manchester Code of Ordinances.

(D) *Penalty.* Any person who violates this provision shall be sentenced under the provisions of §10.99 (a fine up to $1,000).

II. This ordinance shall take effect upon its passage.